U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-E-

DATE: JAN. 12, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, who works in the field of "creativity as it relates to public policy," seeks classification as an individual of extraordinary ability. This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three. The Petitioner appealed the matter to us, and we dismissed the appeal, also finding that he had not met any of the evidentiary criteria. We then denied the Petitioner's subsequent two motions to reconsider.

The matter is now before us on a third motion to reconsider. Upon review, we will deny the motion to reconsider.

I. LAW

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). A petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). Where a petitioner submits qualifying evidence under at least three criteria, we will then determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.[1]

[1] *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO.2010) (holding

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." Furthermore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." In this case, the Petitioner did not submit a statement indicating whether the validity of the decision has been, or is, subject of any judicial proceeding.

Notwithstanding the above, the instant motion does not otherwise meet the requirements of a motion to reconsider. A motion to reconsider contests the correctness of the decision based on the previous factual record. 8 C.F.R. § 103.5(a)(3). The motion must demonstrate that the prior decision was incorrect based on the evidence of record at the time. *Id.* It must state the reasons for reconsideration and cite any pertinent precedent to establish that the decision was based on an incorrect application of law or policy. *Id.* On motion, we consider only arguments and evidence relating to the grounds underlying the most recent decision. In the instant filing, the Petitioner does not state that he met the requirements of a motion to reconsider in this last filing, but instead maintains that his previously submitted documentation satisfies at least three of the regulatory criteria.

Regarding our most recent decision, a motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider. 8 C.F.R. § 103.5(a)(1)(i). For a decision received by mail, we allow 33 days. *See* 8 C.F.R. § 103.8(b). We denied the Petitioner's first motion to reconsider on September 11, 2015. The Petitioner, however, submitted his second motion to reconsider on November 9, 2015, 59 days after our previous decision's issuance.[2] Therefore, we denied the motion to reconsider as untimely filed. In addition, we found that the Petitioner had not established error in the underlying determination regarding his eligibility.

In the instant motion, the Petitioner does not address the untimeliness of his previous motion to reconsider or contest the correctness of our decision in accordance with an improper application of

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that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

[2] The Petitioner's first attempt to file the motion to reconsider was rejected due to improper fees. *See* 8 C.F.R. § 103.7(b)(1)(i). We note, however, that he submitted this first attempt on October 16, 2015, 35 days after the previous decision, rendering it similarly untimely.

law or USCIS policy. The motion to reconsider does not allege that the issues, as raised on the prior motion, involved the application of precedent to a novel situation, or that there is new precedent or a change in law that affects the denial of the previous motion. As noted above, a motion to reconsider must include specific allegations as to how we erred as a matter of fact or law in our prior decision, and it must be supported by pertinent legal authority. Because the Petitioner did not raise such allegations of error, we will deny the motion to reconsider.

Furthermore, the Petitioner requests reconsideration of our initial decision dismissing his appeal based on "evidence submitted earlier in support of this petition." The Petitioner then discusses his evidence as it relates to: 1) published material in professional publications written by others about my work in the academic field,[3] 2) original scholarly research contributions in the field,[4] 3) authorship of scholarly books or articles in scholarly journals with international circulation in the field,[5] 4) performed a leading and critical role for organizations or establishments that have a distinguished reputation,[6] and 5) international recognition as being at the very top of the field of creativity in public policy.

The record of proceedings reflects that in each of our decisions we thoroughly analyzed the Petitioner's documentation and articulated the reasons why his evidence did not satisfy the evidentiary criteria. In the instant motion, the Petitioner does not argue that our prior decision was incorrect based on the record at the time, nor does he cite any law, regulation, or precedent to support an improper application of law or USCIS policy. Instead, the Petitioner requests "a new determination." This request, however, does not meet the filing requirements for a motion to reconsider.

III. CONCLUSION

The Petitioner has not established that we incorrectly applied law or USCIS policy in our prior decision. The Petitioner has not met his burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The motion to reconsider is denied.

Cite as *Matter of E-E-*, ID# 119715 (AAO Jan. 12, 2017)

[3] *See* 8 C.F.R. § 204.5(h)(3)(iii).
[4] *See* 8 C.F.R. § 204.5(h)(3)(v).
[5] *See* 8 C.F.R. § 204.5(h)(3)(vi).
[6] *See* 8 C.F.R. § 204.5(h)(3)(viii).